

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF THE §
PETITION OF ROBERT ALLEY § No. 184, 2009
FOR A WRIT OF MANDAMUS §

Submitted: June 11, 2009

Decided: June 23, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices.

ORDER

This 23rd day of June 2009, upon consideration of the petition of Robert Alley for an extraordinary writ of mandamus, it appears to the Court that:

(1) The petitioner, Robert Alley, seeks to invoke the original jurisdiction of this Court to issue a writ of mandamus to compel the Delaware Department of Correction to: (i) credit him with time served on a sentence imposed by the Superior Court on December 22, 2008; and (ii) provide his Delaware correctional records to correctional authorities in Pennsylvania in order to remove a detainer lodged against him there. The State of Delaware has filed a response and motion to dismiss Alley's petition. After careful review, we find that Alley's petition manifestly fails to invoke the original jurisdiction of this Court. Accordingly, the petition must be DISMISSED.

(2) On July 10, 2007, Alley was arrested and later indicted on charges of resisting arrest, failing to obey a police signal, and criminal impersonation. On November 14, 2007, Alley failed to appear for a case review in the Superior Court, so a bench warrant was issued for his arrest. While he was a fugitive, Alley committed new crimes in Pennsylvania. Eventually, Alley was arrested on the Superior Court bench warrant on August 5, 2008. He remained incarcerated in Delaware until August 19, 2008, when he was transferred to Pennsylvania.

(3) Alley was incarcerated in Pennsylvania for the crimes he committed there as of August 19, 2008. He sought to be returned to Delaware through the Interstate Agreement on Detainers (IAD).¹ On October 11, 2008, Pennsylvania authorities informed Delaware authorities that Alley was a sentenced offender in their custody who was serving an indeterminate sentence ranging from 11 months and 29 days to 23 months and 29 days. Alley was returned to Delaware pursuant to the IAD on December 12, 2008. On December 28, 2008, he pled guilty to resisting arrest and criminal impersonation. The Superior Court sentenced Alley to a total period of three years at Level V incarceration, to be suspended after serving 3 months (with credit for twelve days served) for a period of

¹ 11 Del. C. § 2540, *et. seq.*

probation. On February 27, 2009, the Superior Court entered orders denying Alley's motion for sentence reduction and his petition for a writ of habeas corpus. On March 13, 2009, Alley was transferred back to Pennsylvania to continue serving his sentence there.

(4) Alley filed his petition for a writ of mandamus contending that the Delaware Department of Correction has refused to credit the time he was incarcerated in Delaware from December 12, 2008, to March 13, 2009, against his Delaware sentence. He has requested that a writ be issued directing the Department of Correction to credit this time against his Delaware sentence.

(5) This Court has authority to issue a writ of mandamus only when the petitioner can demonstrate a clear right to the performance of a duty, no other adequate remedy is available, and the trial court arbitrarily failed or refused to perform its duty.² An extraordinary writ will not be issued if the petitioner has another adequate and complete remedy at law to correct the act of the trial court that is alleged to be erroneous.³ More importantly, the Court's jurisdiction to issue an extraordinary writ is limited to instances when the respondent is a court or judge thereof.⁴

² *In re Bordley*, 545 A.2d 619, 620 (Del. 1988).

³ *Canaday v. Superior Court*, 116 A.2d 678, 682 (Del. 1955).

⁴ *In re Hitchens*, 600 A.2d 37, 38 (Del. 1991).

(6) In this case, the Court has no original jurisdiction to issue a writ of mandamus directed to the Department of Correction. Moreover, Alley cannot establish a legal right to credit against his Delaware sentence for the time he served from December 12, 2008, to March 13, 2009, because, pursuant to the IAD, Alley remained in the custody of Pennsylvania authorities following his temporary transfer to Delaware, and the time he spent incarcerated in Delaware was credited toward his Pennsylvania sentence.⁵ He is not entitled to double credit against both his Delaware sentence and his Pennsylvania sentence for the time he served from December 12, 2008, to March 13, 2009.⁶

NOW, THEREFORE, IT IS ORDERED that Alley's petition for a writ of mandamus is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁵ 11 Del. C. § 2544(f).

⁶ *Frady v. State*, 2008 WL 4286542 (Del. Sept. 16, 2008).